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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

E.K. WADE,	)	Consolidated Case No. C 08-00001 JSW /
	)	EDL
Plaintiff,)	
	)	DECLARATION OF MELISSA K.
v.	)	BROWN IN SUPPORT OF THE
	)	FEDERAL DEFENDANT'S
ELAINE CHAO, SECRETARY OF	)	OPPOSITION TO PLAINTIFF'S
LABOR, ET AL.	)	MOTION FOR SANCTIONS
)	
Defendant.)	
	)	Date: September 30, 2008
	)	Time: 3:00 p.m.
	)	Place: Courtroom E, 15 th Floor
	)	Honorable Elizabeth Laporte

I Melissa K. Brown declare and state as follows:

1. I am employed by the United States Attorney's Office, Northern District of California, as an Assistant United States Attorney. My current employment address is 450 Golden Gate Avenue, Box 36055, San Francisco, California, 94102. I am the attorney assigned to the above-captioned matter.

2. On or about June 20, 2008, Plaintiff, E.K. Wade ("Plaintiff") propounded two sets of requests for production pursuant to Federal Rules of Civil Procedure 34; titled Plaintiff's Requests for Production of Documents and Tangible Things Set One, and Plaintiff's Requests for Production of Documents and Tangible Things Set Two. On or about July 7, 2008 Plaintiff propounded his third set of requests for production (hereinafter all three sets are collectively "Requests for Production"). In total Plaintiff propounded eighty-five (85) document requests.

1 True and correct copies of Plaintiff's Requests for Production are attached hereto as exhibit A.

2 3. Because of the large volume of documents requested, and because I was
3 scheduled to be out of the office on vacation from August 4 through August 12, the parties
4 agreed to a rolling production of documents. Per Plaintiff's request, the documents were to be
5 produced in paper form and mailed to him.

6 4. On or about July 21, 2008, the Defendant timely served her initial responses to
7 Plaintiff's First and Second sets of document requests. On or about July 31, 2008, I prepared and
8 mailed two bankers boxes of documents (bates labeled WADE-CHAO00001-04145) and
9 Defendant's Amended Response to Plaintiff's First Set of Requests for Production, Defendant's
10 Amended Response to Plaintiff's Second Set of Requests for Production, both of which were
11 amended only to include the bates ranges of responsive documents at the end of each request to
12 comply with Rule 34 of the Federal Rules of Civil Procedure, and Defendant's Response to
13 Plaintiff's Third Set of Requests for Production, which also included the bates ranges of
14 responsive documents. I chose to list the responsive bates ranges after each request because
15 many of Plaintiff's eighty-five requests were duplicative and or overlapping. Also enclosed with
16 the discovery responses was a cover letter to Plaintiff explaining the limited scope of the
17 amendments, *i.e.* the only amendments are the addition of bates ranges. In addition to including
18 the bates ranges in the discovery responses, I also inserted sheets within the production that
19 referred to categories of documents related to the case to assist with the review of the materials.
20 True and correct copies of Defendant's Amended Response to Plaintiff's First Set of Requests
21 for Production, Defendant's Amended Response to Plaintiff's Second Set of Requests for
22 Production, Defendant's Response to Plaintiff's Third Set of Requests for Production, and the
23 cover letter dated July 31, 2008 are attached hereto as exhibit B.

24 5. The aforementioned materials were mailed to Plaintiff on or about July 31, 2008,
25 and arrived on or about August 6, 2008.

26 6. I was out of the office for the period of August 4, 2008 through August 25, 2008
27 with the exception of August 14, 2008. Specifically, I was out of the country from August 2
28 through August 5, 2008. While out of the country I became ill. On August 7th 2008, I was

1 hospitalized and underwent emergency surgery. I remained in the hospital until August 10, 2008.
2 I did not have access to my email while I was hospitalized. Accordingly, I was not aware that
3 Plaintiff had an issue with the document production and no meet and confer took place. As a
4 result of my surgery, I did not return to work until August 14, 2008.

5 7. Plaintiff filed his motion for sanctions on August 11, 2008.

6 8. On August 14, 2008, I briefly returned to the office (to complete paperwork
7 related to my illness) and learned for the first time that Plaintiff had filed a motion for sanctions.
8 On that day I contacted Plaintiff via telephone to discuss, *inter alia*, the document production and
9 motion for sanctions. I informed Plaintiff that I had just returned to the office and received his
10 email dated August 6, 2008 and his motion for sanctions. I informed Plaintiff that the Defendant
11 had complied with the Federal Rules of Civil Procedure by including the responsive bates range
12 at the end of each document request and serving Plaintiff with the amended responses. I further
13 informed Plaintiff that I had enclosed those responses in the boxes with the document
14 production in a manila envelope. Plaintiff insisted that he had not received the amended
15 responses, he became irate, yelled at me and repeatedly used profanity. I assured Plaintiff that
16 the amended responses were produced with the document production and asked him to double-
17 check the materials that he received.

18 9. Unfortunately, on August 15, 2008, I experienced a relapse and spent seven hours
19 in the emergency room. Consequently, I did not return to work on August 15, 2008. On August
20 17, 2008, I experienced a second relapse and was re-admitted to the hospital. On August 18,
21 2008, I underwent a second emergency surgery. I returned to work on a part-time basis on
22 August 25, 2008, but was instructed by my physician to remain home at least until September 2,
23 2008. As a result, I was only in the office for about three to four hours per day.

24 10. During the week of August 25, 2008, while in the office, I accessed my email. I
25 reviewed an email from Plaintiff dated August 19, 2008. In that email, Plaintiff admits that he
26 did in fact receive the amended discovery responses and that such responses were enclosed with
27 the document production that he received on or about August 6, 2008. A true and correct copy of
28 the August 19, 2008, email by Plaintiff is attached hereto as exhibit C.

1 11. During the period of August 4, 2008 to the present, I have had no telephone
2 conversations other than the conversation on August 14, 2008 with Plaintiff. On September 3,
3 2008, I sent Plaintiff a meet and confer letter in response to the issues raised by Plaintiff
4 regarding document production. I further informed Plaintiff that it was the Defendant's position
5 that the Motion for Sanctions was premature. I asked Plaintiff to contact me to schedule a date
6 and time to meet and confer. Plaintiff has not responded. A true and correct copy of the
7 September 3, 2008 correspondence to Plaintiff is attached hereto as exhibit D.

8 12. Defendant has not received any declaration in support of Plaintiff's motion for
9 sanctions. Nor has Defendant received any document itemizing Plaintiff's attorneys fees, or
10 other costs, or expenses requested.

11 13. I am informed and believe that on or about August 8, 2008, Plaintiff contacted
12 my assistant and insisted that she admit that the documents produced failed to comply with the
13 Federal Rules of Civil Procedure; but she refused.

14 14. I am informed and believe that Mr. Cheng does not recall having a telephone
15 conversation with Plaintiff on or about August 8, 2008. Mr. Cheng had no first-hand knowledge
16 as to how the documents in question were actually produced because he did not see the
17 production.

18 15. Due to Counsel's hospitalization, the deposition of Mr. Smitherman was moved
19 from August 20, 2008 to September 5, 2008 and took place on that date.
20

21 I declare under penalty of perjury of the laws of the State of California that the foregoing
22 is true and correct and that this declaration was executed on September 9, 2008 in San Francisco,
23 California.
24

25 By: /s/

26 _____
MELISSA K. BROWN
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned certifies that she is causing a copy of the following:

**DECLARATION OF MELISSA K. BROWN IN SUPPORT OF
THE FEDERAL DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION FOR SANCTIONS**

in the case of *E.K. Wade v. Elaine Chao, Secretary of Labor, et al., C 08-00001 JSW*

to be served this date upon the party in this action, by placing a true copy thereof in a sealed envelope, and served as follows:

 X **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

 PERSONAL SERVICE (BY MESSENGER)

 FEDERAL EXPRESS

 FACSIMILE (FAX) Telephone No.: _____

to the party(ies) addressed as follows:

E.K. WADE
542 North Civic Drive, Apt. D
Walnut Creek, CA 94597

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 9, 2008, at San Francisco, California.

/s/
BETH MARGEN
Legal Assistant